

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
MAY 9 2003

JAMES SEABA and
CORY PHILLIPS,

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Plaintiffs,

R. J. Phillips
CLERK OF COURT

v.

Civ. No. 02-103 LH/RHS

MESOSYSTEMS TECHNOLOGY, INC.,

Defendant.

**MOTION TO VACATE
AND RE-SET SETTLEMENT CONFERENCE**

Plaintiffs, James Seaba and Cory Phillips, respectfully request that the Court vacate the Settlement Conference scheduled for June 25, 2003, at 9:00 a.m. As grounds for this Motion, Plaintiffs state that Plaintiff James Seaba, on behalf of his employer, is scheduled to be at the Montreaux Energy Roundtable, in Montreaux, Switzerland on June 25, 2003. See Exhibit A hereto, Affidavit of James Seaba, ¶2. Dr. Seaba will be presenting a technical paper on future fuels for advanced propulsion systems at the Roundtable. *Id.* ¶3. Dr. Seaba is scheduled to be back in the United States on June 25, 2003, at 5:00 p.m.. *Id.*

This case is not yet set for trial, but the current scheduling order provides that the Defendant is to file the final Pretrial Order with the Court by September 18, 2003. There is, therefore, sufficient time before trial to conduct a meaningful settlement conference. Moreover, Defendant can point to no prejudice that it will suffer if the Settlement Conference is postponed by a few days, or even a couple of weeks, whereas Plaintiff

15

James Seaba and his employer will suffer significant hardship if he is unable to attend the conference in Switzerland. *Id.*, ¶4.

Defendant opposes this Motion.

WHEREFORE, Plaintiffs respectfully request that the Court enter its Order vacating the June 25, 2003 Settlement Conference, and re-setting the Settlement Conference for the earliest possible date after June 25, 2003.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: Angelo J. Artuso
Lisa Mann
Angelo J. Artuso
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Albuquerque, New Mexico 87103-2168
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WE HEREBY CERTIFY that a true
and correct copy of the foregoing pleading
was mailed to all counsel of record this
9th day of May, 2003.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: Angelo J. Artuso
Angelo J. Artuso

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JAMES SEABA and
CORY PHILLIPS,

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Civ. No. 02-103 LJH/RHS

MESOSYSTEMS TECHNOLOGY, INC.,

Defendant.

AFFIDAVIT OF JAMES SEABA, Ph.D.

James Seaba, being first duly sworn states upon his oath:

1. My name is James Seaba. I am a plaintiff in this action, and am over 21 years old. I make the following statements based on my personal knowledge.

2. In April, 2003, I arranged, through and on behalf of my employer to attend the Montreux Energy Roundtable, in Montreux, Switzerland. I leave for the Roundtable on June 14, 2003 and am scheduled to return to the United States on June 25, 2003.

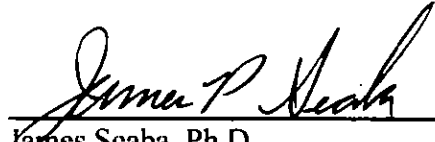
3. While at the Roundtable, I will be presenting a paper on future fuel trends. My presentation is on June 18, however, I have a business meeting near Frankfurt, Germany from June 23 to 24, 2003. I will be flying back to the U.S. on June 25 arriving in Tulsa, Oklahoma at 5 pm.

4. My attendance at the Roundtable is of significant importance to my work for my employer. My employer is one of the sponsors for the conference, and no one

EXHIBIT

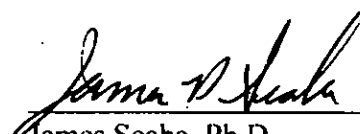
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else can explain the information that I present. If I am unable to attend, my work, and that of my employer will suffer.



James Seaba, Ph.D.

STATE OF OKLAHOMA
COUNTY OF Washington

James Seaba, Ph.D., being first duly sworn, says he is a Plaintiff herein, has read the foregoing Affidavit and knows the content thereof, and the statements contained therein are true to the best of his knowledge and belief.


James Seaba, Ph.D.

Signed and sworn to before me on May 5, 2003 by James Seaba.

 com #00001694
Notary Public

(Seal)



My commission expires: 1-28-2004